

STATE OF VERMONT
ADDISON COUNTY, SS

State of Vermont

v.

Nanci L. Ackland
Defendant

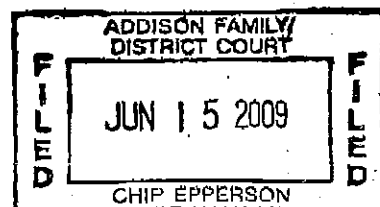
DISTRICT COURT
Docket No. 198-5-09 Ancr

DECISION ON MOTION TO SUPPRESS
AND FINAL CIVIL SUSPENSION HEARING

The above-captioned matter came on regularly for a final civil suspension hearing and hearing on the defendant's Motion to Suppress Evidence and Statements on June 15, 2009. The State was represented by Christopher E. Perkett, Esq. The defendant was present and was represented by Jerry L. Schwarz, Esq. Based on the credible evidence adduced at hearing and the pleadings and papers on file herein, the court issues the following decision:

Findings of Fact

1. Officer William Austin is a police officer for the town of Middlebury. He has been a police officer for 5 years.
2. Officer Austin received training at the Vermont Police Academy. In the radar training course he was taught to estimate the speed of a vehicle, visually, and visually in conjunction with the sound of the vehicle. However, it was not a part of his training to identify the speed of a vehicle by sound only. It is not reliable to estimate the speed of a vehicle by sound only, because a vehicle may be in a low gear and making a loud sound, such that it sounds like the vehicle is traveling faster than it actually is.
3. At 9:31 p.m. on April 24, 2009, Officer Austin was stopped near the intersection of Quarry St. and Case St. (Rt. 116), in the town of Middlebury, monitoring traffic. He was facing southbound. Another officer, also in a marked cruiser, Nicole Chapleau, was facing northbound. At this time, the officers' attention was drawn to the defendant's vehicle by the loud sound that it was making. The sound indicated that the vehicle was operating at high RPM's, and the officers speculated that the vehicle might be speeding. Officer Chapleau attempted to get the defendant's vehicle on radar, but was unsuccessful. When Officer Austin saw the vehicle it was not speeding. The defendant properly stopped at the stop sign at the intersection. At the intersection, Officer Austin heard the defendant's engine "rev" for around 5 seconds while the vehicle was stopped.



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This indicated to the officer that the vehicle was either in an inappropriate gear or was in neutral. The defendant then turned south onto Case St.

4. Due the engine "rev'ing" that he heard, and the time of night, Officer Austin followed the defendant on Case St. for approximately one mile. For a short distance, the defendant's tires touched one of the dividing lines in the center of the road. The defendant never crossed the center line, nor was the defendant speeding or weaving. Case St. is bisected by a solid line in the northerly direction and a dashed line (passing zone line) in the southerly direction (the defendant's direction of travel). Officer Austin is unable to say if the defendant's tires were just touching the dashed line or both the dashed and solid line, therefore, the court is only able to conclude that the defendant's tires touched the dashed passing line, which was closest to her.

5. Officer Austin stopped the defendant's vehicle out of concern that the driver was impaired. After the stop, the officer's suspicions were proven to be correct and the defendant was processed for DUI.

6. The defendant's vehicle has a standard transmission. Although she has owned the vehicle for 7 years, she tends to rev the engine when starting from a stop. The intersection where she was observed by the police is a slight incline, making the defendant more prone to rev her engine while starting.

Conclusions of Law

The defendant has stipulated that the sole issue for the court's consideration is the validity of the stop. In order for the stop to be lawful under the Fourth Amendment of the U.S. Constitution and Article 11 of the Vermont Constitution, the officer must have had an "articulable and reasonable" suspicion of wrongdoing regarding the vehicle or its occupant. *State v. Emilo*, 144 Vt. 477, 481 (1984), citing *Delaware v. Prouse*, 440 U.S. 648 (1979). A mere "suspicion" or "hunch" on the part of the officer without more is not enough. *Id.* However, a reasonable and articulable suspicion of a violation of Vermont's motor vehicle laws, does justify an investigative detention. *State v. Beauregard*, 175 Vt. 472, 473 (2003) (mem.).

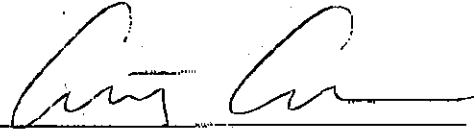
In our case, the arresting officer did not have "reasonable and articulable" suspicion of wrongdoing. There was no evidence of speeding or erratic driving. The rev'ing of the engine does not provide "reasonable and articulable" suspicion of wrongdoing when it is not accompanied by speeding or the spinning of tires. At best, it can be shown by the State that the defendant's tires touched the dashed passing line but did not cross the center line nor touch the solid line to the right of the dashed passing line. Under these circumstances, the stop is not justified as a violation of a motor vehicle law.

The officer testified that he stopped the defendant's vehicle because he was concerned that the operator may have been impaired. However, this was based on a "hunch" rather than a "reasonable and articulable" suspicion of wrongdoing, under the circumstances.

Order

The defendant's Motion to Suppress is GRANTED. Judgment is entered for the operator on the civil suspension.

Dated at Middlebury this 15th day of June, 2009.

A handwritten signature in black ink, appearing to read 'Cortland Corsones', written over a horizontal line.

Cortland Corsones
District Court Judge